

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
)	
)	

**OPPOSITION TO PETITIONS FOR RECONSIDERATION
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
AND THE
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The National Telecommunications Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) (collectively “the Associations”)¹ hereby submit these opposing comments to the Petitions for Reconsideration filed by several wireless carriers on June 24, 2005.² The wireless carriers seek reconsideration of the Commission’s March 17, 2005 Report and Order establishing minimum requirements for a telecommunications carrier to be designated as an

¹ The Associations are national membership organizations that collectively represent the majority of rural incumbent local exchange carriers providing service in the United States.

² *Centennial Communications Corp. Petition for Reconsideration*, CC Docket No. 96-45 (filed June 24, 2005) (Centennial Petition); *Nextel Partners, Inc. Petition for Reconsideration*, CC Docket No. 96-45 (filed June 24, 2005) (Nextel Petition); *Dobson Cellular Systems, Inc. Petition for Reconsideration*, CC Docket No. 96-45 (filed June 24, 2005) (Dobson Petition); *CTIA-The Wireless Association Petition for Reconsideration*, CC Docket No. 96-45 (filed June 24, 2005) (CTIA Petition).

eligible telecommunications carrier (ETC).³ NTCA and OPASTCO urge the Commission to reject petitioners' requests to remove provisions of the Order that better ensure that ETC applicants demonstrate their commitment and ability to provide the supported services throughout the designated area. Specifically, it is imperative that the Commission maintain a requirement that ETC applicants submit a formal network improvement plan. In addition, the FCC should confirm that state commissions may determine what constitutes a reasonable request for service for all ETCs that they designate, including wireless ETCs.

II. THE COMMISSION SHOULD MAINTAIN A REQUIREMENT THAT ETC APPLICANTS SUBMIT A FORMAL NETWORK IMPROVEMENT PLAN

Several wireless petitioners seek reconsideration of the Order's requirement that ETC applicants submit a five-year network improvement plan, arguing that a shorter forecasting requirement would be more feasible and realistic.⁴ In one case, an argument is made for entirely eliminating the formal network improvement plan requirement.⁵ While couched in terms of forecasting difficulties and competitive imbalances, petitioners' arguments reveal their reluctance to be held accountable for how they will use the high-cost support they receive. The Commission should reject this effort on the part of wireless petitioners to free themselves of the accountability that is a necessary part of receiving federal support collected from the nation's ratepayers.

The Order requires ETC applicants to submit a formal network improvement plan to ensure that these carriers will use the support they receive to improve coverage, service

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (Order).

⁴ Nextel Partners argues that the Commission should reduce the forecasting requirement to 18 months. Nextel Petition at 11-12; CTIA advocates a 12-18 month planning horizon. CTIA Petition at 4; Dobson Cellular suggests that the Commission require ETCs to report annually on how universal support would be used. Dobson Petition at 7.

⁵ Centennial Petition at 5.

quality, or capacity in the areas for which they are designated. Without the submission of such a plan, the Commission would have no mechanism, other than the annual certification requirement, to ensure that universal service support is used for these intended purposes.

The filing of a formal network improvement plan is particularly essential for ETC applicants in rural service areas in light of the fact that these carriers receive high-cost support based on the unrelated costs of the ILEC and not their own. When support is based upon a carrier's own record of past investment, it is clear how that support is being used. However, it is far more difficult to discern how competitors will use support based on the *incumbent's* actual spending record, particularly when the competitor's network utilizes an entirely different technology and has an entirely different cost structure. A formal network improvement plan is therefore a necessary tool for the FCC and state commissions to monitor the expenditures of high-cost support by competitive ETCs in rural service areas to make certain that the support is used only for "...the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁶

A formal network improvement plan is also crucial because it enables the FCC and state commissions to evaluate an ETC applicant's ability and commitment to provide service throughout the designated service area. In particular, a network improvement plan provides target completion dates that demonstrate how each project that receives universal service support will ultimately lead to a network that provides coverage throughout an ETC's designated area. The buildout of a network that is capable of serving all customers in a designated service territory upon reasonable request goes to the very heart of what it means to be an ETC.

⁶ 47 U.S.C. §254(e).

A couple of petitioners attempt to argue that the Order improperly focuses on network buildout at the expense of network maintenance.⁷ Dobson, for example, asserts that “[t]he network improvement plan’s focus on ‘improvements and upgrades’ denies carriers any meaningful opportunity to demonstrate how support is used, consistent with the statute, for the ‘provision’ or ‘maintenance’ of facilities used to provide the supported services.”⁸ This argument misconstrues the Order and ignores the primary purpose of the High-Cost universal service program.

The primary goal of the High-Cost program is to incent and enable carriers to provide quality service at affordable rates to consumers living in areas that would otherwise be too cost prohibitive to serve. Indeed, section 214(e) of the Telecommunication Act of 1996 requires that ETCs provide service throughout the area for which they have been designated.⁹ Thus, it is entirely appropriate for the Commission to focus the use of universal service support on the improvement of “...coverage, signal strength, or capacity that *otherwise would not occur absent the receipt of high-cost support*.”¹⁰

The Commission is not attempting to “...delete, with respect to competitive ETCs, two of the three uses of support permitted under section 254(e)”¹¹ as Dobson Cellular contends. The maintenance of networks is, of course, an entirely appropriate use of high-cost funding once the networks are fully built out. The Commission is simply and correctly focusing on the responsibility that competitive ETCs have to make service available throughout their designated service area. The Commission must hold firm to its commitment

⁷ Dobson Petition at 6; CTIA Petition at 8.

⁸ Dobson Petition at 6.

⁹ 47 U.S.C. §214(e).

¹⁰ Order, 20 FCC Rcd 6380, ¶21 (emphasis added).

¹¹ Dobson Petition at 6.

to ensure that all ETC applicants are capable and committed to taking on the responsibilities of ETC designation by requiring the submission of a formal network improvement plan.

III. IT IS LAWFUL AND APPROPRIATE FOR STATE COMMISSIONS TO DETERMINE WHAT CONSTITUTES A REASONABLE REQUEST FOR SERVICE FOR ALL ETCs THAT THEY DESIGNATE, INCLUDING WIRELESS ETCs

A couple of wireless petitioners take issue with state commissions determining what constitutes a reasonable request for service for wireless ETCs.¹² These petitioners argue that what constitutes a reasonable request for service for wireless ETCs is properly determined by the FCC, even for wireless ETCs that have been designated by state commissions. However, this is not, as Nextel contends, "...an inappropriate delegation by the FCC to the states of the authority to interpret Federal law."¹³ It is instead recognition of a primary responsibility of states with respect to the ETCs that they designate.

Dobson Cellular attempts to link state determinations of what constitutes a reasonable request for service with rate and entry regulation,¹⁴ which states are prohibited from applying to wireless carriers under section 332(c)(3) of the Communications Act. However, a state's determination of what constitutes a reasonable request for service for the wireless carriers that they have designated as ETCs in no way prohibits these carriers from offering service in the area (which they obviously have already begun to do) nor does it impose any requirements on the rates they may charge. As the Commission correctly points out in the Order, "[w]hile Section 332(c)(3) of the Act preempts states from regulating the rates and

¹² Nextel Petition at 9-11; Dobson Petition at 7-11.

¹³ Nextel Petition at 10.

¹⁴ Dobson Petition at 8-10.

entry of CMRS providers, it specifically allows states to regulate the other terms and conditions of commercial mobile radio services.”¹⁵

Petitioners’ arguments also ignore the basic fact that ETC status is voluntary. It is absurd for wireless ETCs to equate the general regulatory exemption from state regulation of section 332(c) with the requirements that apply only to those carriers that voluntarily seek ETC status. Furthermore, the United States Court of Appeals for the Fifth Circuit acknowledged that state commissions have the authority to “impose additional eligibility requirements on carriers otherwise eligible to receive universal service support.”¹⁶ Consistent with the FCC’s principle of competitive neutrality,¹⁷ all carriers designated as ETCs by a state commission should be subject to the same set of requirements.

Finally, Dobson contends that a singular federal definition of a reasonable request for service should apply to all wireless ETCs because “[a]llowing individual states to define a ‘reasonable request for service’ for CMRS carriers who are ETCs would erode the uniform, national regulatory scheme under which those CMRS carriers operate....”¹⁸ However, Dobson fails to acknowledge that many rural ILECs are owned by holding companies and these holding companies must adhere to the different regulations of all of the states in which they have operating carriers. If rural ILEC holding companies must comply with differing regulations throughout multiple state jurisdictions, wireless petitioners that voluntarily seek ETC status from more than one state commission should be required to comply with each

¹⁵ Order, 20 FCC Rcd 6384-6385, ¶31.

¹⁶ *Texas Office of Public Utility Counsel; National Association of State Utility Consumer Advocates v. Federal Communications Commission*, 183 F.3d 393, 418 (2001).

¹⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 ¶47 (1997).

¹⁸ Dobson Petition at 9.

state's ETC requirements as well. If a wireless carrier believes that a state commission's requirements for ETCs are too burdensome, they can always choose not to apply for ETC designation.

IV. CONCLUSION

The Commission should reject petitioners' arguments for abandoning the requirement that ETC applicants submit a formal network improvement plan and for prohibiting state determinations of what constitutes a reasonable request for service for the wireless ETCs that they designate. As demonstrated above, petitioners are reluctant to fulfill the additional responsibilities that come with receiving federal universal service support. If petitioners find it too burdensome to comply with the requirements and determinations established by the FCC and relevant state commissions, they should decline to apply for ETC status. The Commission should stand firm in its commitment to ensure that universal service support is used for its intended purposes and that state commissions have the flexibility to apply their own requirements for the ETCs that they designate.

Respectfully submitted,

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August 4, 2005

CERTIFICATE OF SERVICE

I, Brian Ford, hereby certify that a copy of the opposition to the petition for reconsideration by NTCA and OPASTCO was sent by first class United States mail, postage prepaid, on this, the 4th day of August, 2005, to those listed on the attached sheet.

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